

# Order

Michigan Supreme Court  
Lansing, Michigan

October 18, 2005

Clifford W. Taylor,  
Chief Justice

ADM File No. 2005-16

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Amendment of Rule 4.101  
of the Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 4.101 of the Michigan Court Rules are adopted, effective January 1, 2006.

[The present language is amended as indicated below by underlining for new text.]

## Rule 4.101 Civil Infraction Actions

### (A) Citation; Complaint; Summons; Warrant.

(1) [Unchanged.]

(2) A violation alleged on a citation may not be amended except by the prosecuting official for the plaintiff.

~~(2)~~(3) [Renumbered but otherwise unchanged.]

~~(3) A single citation may not allege both a misdemeanor and a civil infraction.~~

(4) [Unchanged.]

### (B) [Unchanged.]

### (C) Appearance by Police Officer at Informal Hearing.

(1) If a defendant requests an informal hearing, the court shall schedule an informal hearing and notify the police officer who issued the citation to appear at the informal hearing.

(2) The attendance of the officer at the hearing may not be waived.

Except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the police officer to appear as required by this rule shall result in a dismissal of the case without prejudice.

~~(C)-(D)~~(D)-(E) [Renumbered but otherwise unchanged.]

~~(E)~~(F) Contested Actions; Notice; Defaults.

- (1) A contested action may not be heard until a citation is filed with the court. If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper. A citation that is not signed and filed on paper, when required by the court, ~~will~~ may be dismissed with prejudice.

(2)-(4) [Unchanged.]

~~(F)-(G)~~(G)-(H) [Renumbered but otherwise unchanged.]

Staff Comment: The amendment of MCR 4.101(A)(2) limits amendment of a violation on a citation filed with the court to the prosecuting official. The deletion of former subsection (A)(3) conforms to a change in MCR 6.615(A)(3), which takes effect January 1, 2006. The new subsection (C) requires the court to schedule an informal hearing when requested by the defendant, and notify the officer who issued the citation to appear, prohibits waiver of the presence of the officer at an informal hearing, and establishes procedures if the police officer fails to appear for a hearing. The amendment of relettered (F)(1) makes this section consistent with changes of MCR 6.615(D)(1), which take effect January 1, 2006.

The staff comment is not an authoritative construction by the Court.

CORRIGAN, J. (*dissenting*). I would not adopt MCR 4.101 as it was released to the public for notice and comment. Nor would I prohibit all waivers on a statewide basis as the current modified rule provides. Instead, I would authorize limited pilot projects in those districts willing to participate, such as are currently occurring in the 8<sup>th</sup> District Court and the 16<sup>th</sup> District Court, to test the practicality of allowing waivers of police officers' testimony at informal civil infraction hearings. Contrary to the policy judgment that the new prohibition reflects, I do not share the belief that a police officer's absence at

such hearings is universally detrimental to a civil defendant; in some circumstances, a citizen may see some strategic benefit in authorizing the written testimony of a police officer. I would allow experimentation, to be followed by a report regarding the merits of the pilot program.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 18, 2005

*Corbin R. Davis*  
Clerk